

## Request Details

Status : Assignment Determination Due Date : 11/23/2012

0

Submitted Evaluation Assignment Processing Closed

Tracking Number : EPA-HQ-2013-000712

Requester : Keisha Sedlacek

Organization : Hall &amp; Associates

Requester Has Account : Yes

Submission Details Case File Admin Cost Assigned Tasks Comments Review

## Request Handling

Requester Info **Yes**  
Available to the Public :  
Request Track : **Simple**  
Fee Category : **Commercial**  
Fee Waiver Requested: No  
Fee Waiver Status: N/A  
Expedited Processing Requested : No  
Expedited Processing Status : N/A

Request Perfected : Yes  
Perfected Date : 10/24/2012  
Acknowledgement Sent Date:   
Unusual Circumstances ? : No  
5 Day Notifications: ☐  
Litigation : **No**

## Request Description

Short Description : 

To Whom This May Concern:

Please find attached a Freedom of Information Act (FOIA) request #2 for records associated with EPA's response to the Great Bay Municipal Coalition's scientific misconduct letter. If you have any questions, please do not hesitate to contact this office.

Sincerely, Keisha Sedlacek

Description Available to the Public : **Yes**Has Request Been Modified? ☐

## Attached Supporting Files

Attachments Available to the Public : **Yes**

Attached File	Type	Size (KB)
FOIA Request 2.pdf	PDF	910.66

SAVE CHANGES

CANCEL



## **HALL & ASSOCIATES**

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October 22, 2012

### **VIA E-MAIL**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW (2822T)  
Washington, D.C. 20460  
E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

**RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter**

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

### **Background:**

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.



On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

**Request:**

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

*Although available data in 2008 did not show the Great Bay Estuary was nutrient impaired, EPA asked DES to change the impairment listing to "nitrogen impaired" to avoid a potential lawsuit with Conservation Law Foundation. (See attached the internal DES emails sent November 25, 2008, verifying this point, as well as, an email sent from EPA to DES sent on November 25, 2008.).*

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall

JOHN C. HALL

Cc: Great Bay Municipal Coalition



Re: NH estuary criteria

Alfred Basile,  
 Stephen Silva to: Jean Brochi, 11/26/2008 01:51 PM  
 David  
 Ann Williams, Ken Moraff, Mel  
 Cc: Cote, Roger Janson, Stephen  
 Perkins

From: Stephen Silva/R1/USEPA/US  
 To: Alfred Basile/R1/USEPA/US@EPA, Jean  
 Brochi/R1/USEPA/US@EPA, David  
 Pincumbe/R1/USEPA/US@EPA, Matt  
 Cc: Ann Williams/R1/USEPA/US@EPA, Ken  
 Moraff/R1/USEPA/US@EPA, Mel  
 Cote/R1/USEPA/US@EPA, Roger



To everyone involved in this review and preparation of these comments,  
 nice job! thanks,  
 Steve

Alfred Basile/R1/USEPA/US

Alfred  
 Basile/R1/USE  
 PA/US

11/25/2008  
 12:17 PM

To ptrowbridge@des.state.nh.us, pcurrier@des.state.nh.us,  
 gcomstock@des.state.nh.us  
 cc Ken Moraff/R1/USEPA/US@EPA, Stephen  
 Silva/R1/USEPA/US@EPA, Mel Cote/R1/USEPA/US@E  
 Roger Janson/R1/USEPA/US@EPA, Phil  
 Colarusso/R1/USEPA/US@EPA, Matt  
 Liebman/R1/USEPA/US@EPA, David  
 Pincumbe/R1/USEPA/US@EPA, Jean  
 Brochi/R1/USEPA/US@EPA, Ann  
 Williams/R1/USEPA/US@EPA, Stephen  
 Perkins/R1/USEPA/US@EPA

Subject NH estuary criteria

Hello Phil:

Thank you very much for your recent draft report on the  
 development of numeric nutrient criteria for New Hampshire's  
 estuaries. The EPA provides the following comments to assist in  
 supporting final criteria recommendations. Overall, we believe  
 that the approach used to derive impairment thresholds is  
 scientifically sound. The EPA fully supports the application of a  
 weight-of-evidence approach and the use of a conceptual model  
 that tests whether there is a dose-response relationship in the data.  
 As we have seen in other estuaries, as nitrogen concentrations  
 increase to unacceptable levels, significant impacts to designated  
 uses are likely to occur. We strongly encourage you to work as  
 expeditiously as possible to ensure that the criteria are finalized



and ultimately adopted as water quality standards. Please let us know if we can provide further assistance as you continue to move forward.

### General Comments

1) Page 2 - it is stated that results reported as less than the method detection level were excluded to avoid bias. Not sure we understand, as this may also introduce bias into the dataset. How many data points were excluded? Please provide greater explanation.

2) Page 7 - the section on hyperspectral imagery needs more explanation; what is sidelap? Also, at the TAC meeting it was stated that the hyperspectral imagery was not conclusive (something wrong with calibration of equipment?). More information would be helpful.

3) EPA strongly encourages the State to continue to develop both phosphorus and nitrogen criteria for lakes, rivers, and streams. Although nitrogen appears to be the primary controlling nutrient in the Great Bay estuary, elevated levels of both nutrients can significantly impact designated uses in the tributaries.

### Chlorophyll a

4) Please provide more explanation on the primary contact recreation threshold for chlorophyll as this strongly influences the N criteria. Why is the threshold 15 ug/l in freshwater and 20 ug/l in saltwater?

5) A ratio was derived for the Squamscott River to convert the chlorophyll threshold from summer to annual. How applicable is this ratio for other waters?

### Dissolved oxygen

6) Grab samples for D.O. most likely do not reflect minimum D.O. values and therefore the TN threshold of 0.57 mg/l should be given minimal weight. The sonde data only supports that the D.O. threshold is somewhere between TN of 0.39 mg/l (high end of the range where D.O is fine) and 0.45 mg/l (low end of the range where D.O was not fine). When you couple this with the macroalgae data which indicates that TN should be less than 0.42 mg/l to prevent nuisance macroalgae (also an important indicator

of aquatic life impairment) it does not appear that the identified target of 0.5 mg/l TN will be protective of aquatic life.

7) It may be useful to look at the swing in DO concentrations from the Datasondes. Looking at daytime maximums versus night-time minimums on each day at each location may be insightful. Eutrophied areas generally experience hypersaturation during the day followed by night-time crashes in DO.

8) The D.O criterion is 5.0 mg/l minimum; there is no allowance for 10% exceedence of this threshold.

### Eelgrass

9) Light Attenuation Coefficient -- We understand the use of the 22% of surface light as the endpoint for the quantity of light needed for eelgrass survival. As cited in your document, the Chesapeake Bay program developed a figure of >22% ambient light as needed for eelgrass survival. It should be noted, however, that this figure refers just to the survival of an adult shoot, it does not guarantee that quantity of light is sufficient to support successful reproduction and production of viable seeds. Reproduction is an energy intensive activity, so successful reproduction will likely require substantially more than 22% ambient light. We do not suggest a recalculation utilizing a different light attenuation coefficient, because a scientifically valid number to address our point is not yet known. We make this point to highlight that this part of the analysis is not conservative and results in a higher nitrogen concentration than what is actually required. However, this target may be more appropriate if the compliance point is upstream in the tidal tributaries, as reported on page 45 of the report, as this would ensure that nitrogen concentrations are less than 0.32 mg/L throughout the vast majority of the estuary.

10) EPA concurs with the assertion that nitrogen strongly contributes to water column turbidity which results in impacts to eelgrass. Even though the analysis is correlative, we are seeing strong relationships in the data and multiple components of the conceptual model have been corroborated.

11) Page 45 - additional research needed; states that deep edge depth (zmax) is needed.. Details on what is involved in zmax estimations and how the zmax information will be used should be included.



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### **Macroalgae**

12) The abundance of nuisance macroalgae is an important indicator of aquatic life use support, in both eelgrass and non-eelgrass areas. More information on the negative impacts of nuisance macroalgae would be helpful so the reader fully understands the importance of this issue.



**Mulholland, Evan**

**From:** Trowbridge, Philip [Philip.Trowbridge@des.nh.gov]  
**Sent:** Wednesday, November 26, 2008 3:46 PM  
**To:** Comstock, Gregg; Currier, Paul M.; Edwardson, Ken  
**Cc:** Diers, Ted  
**Subject:** RE: 303d-EPA wants us to list Gt Bay for N

We would most certainly list GB as impaired in 2010 so this is really a timing issue.

I have always felt uncomfortable when discussing the chloride impairments on I-93 because EPA, not DES, put them on the list. If the listing is inevitable, I think DES should be the one to add the waterbodies to the list, not EPA.

If we are going to add GB, we should take advantage of the opportunity to resolve some other inconsistencies. For example, the TN concentrations are highest in the Cocheco but this AU was not listed because we have not seen high chlorophyll-a there. With the draft criteria, we have a justification for adding the Cocheco River, Upper Piscataqua River, Bellamy River, Great Bay, and Little Bay based on the median TN concentrations in these waterbodies. These waterbodies plus the four already on the list cover all of the GBE down to Dover Point. The only portion of the estuary that would not be impaired for nitrogen would be the Lower Piscataqua and Portsmouth Harbor. At least there would be an even playing field for all watershed municipalities – except for those discharging to the lower Piscataqua (Portsmouth, Newington, Kittery).

-----Original Message-----

**From:** Comstock, Gregg  
**Sent:** Wednesday, November 26, 2008 10:26 AM  
**To:** Currier, Paul M.; Trowbridge, Philip; Edwardson, Ken  
**Subject:** 303d-EPA wants us to list Gt Bay for N

Hi all,

Al Basile just called.

To avoid a potential lawsuit with CLF, EPA has decided that Gt Bay should be listed for N. The basis for this is Phil's recent nutrient analysis and bar graph showing Gt Bay concentrations exceed the preliminary 0.32 mg/L N threshold for eelgrass. He said that prior to this, Phil Coluruso and Matt Liebman had done some statistical analyses of our data and concluded that Gt Bay should be listed.

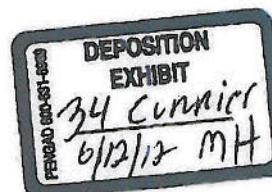
I said the reason why we didn't list it is because Phil's analysis was conducted after we submitted the 303d list. It's a timing issue. If after advise from the workgroup, DES decides to use 0.32 mg/L and develops protocols for determining where this value should be applied (ie, where would eelgrass grow), DES will list any additional waters for N in 2010. Al will contact Tom Irwin to see if they would wait until 2010.

If CLF wants Gt Bay listed in 2008 (or they file a lawsuit), Al asked if we would be amenable to amending our 303d list which I presume would mean another public notice. If we don't, EPA would issue a partial approval and take steps to add Gt Bay to our 303d list (through the federal register)

1. Are we at a point where we feel comfortable listing Gt Bay for N?
2. If so, should we wait until 2010 or should we help EPA out and file an amendment to our 303d list (assuming CLF does not agree to wait until 2010).

Please let me know Dec 3

Thanks



G

Gregg Comstock, P.E.  
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 NHDES Watershed Management Bureau  
 603-271-2983 603-271-7894 (fax)  
[gcomstock@des.state.nh.us](mailto:gcomstock@des.state.nh.us)

